

Margaret M. Zwisler  
Direct Dial: 202-637-1092  
margaret.zwisler@lw.com

555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Tel: +1.202.637.2200 Fax: +1.202.637.2201  
www.lw.com

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October 23, 2014

### VIA ECF

The Honorable Katherine B. Forrest  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007-1312

Re: *In re Aluminum Warehousing Antitrust Litig.*, No. 1:13-md-02481-KBF-RLE  
Response to Plaintiffs' Letters re: Notice of Supplemental Authority

Dear Judge Forrest:

The LME submits this informational letter pursuant to Rule 1. (B) of Your Honor's Individual Rules of Practice.

Plaintiffs' latest two letters ostensibly responding to the LME's Notice of Supplemental Authority in support of its opposition to plaintiffs' motion for reconsideration (ECF 579) have no conceivable relationship to the issues that this Court decided when it held that the LME is immune from plaintiffs' suit. While the LME is reluctant to continue to respond to plaintiffs' gratuitous submissions, we submit this short informational rebuttal to ensure that our position is on the record.

Plaintiffs' latest argument that this Court's opinion granting the LME's motion to dismiss on sovereign immunity grounds is wrong is based upon a press report that one of the LME's executives came to Washington and supposedly met with members of Congress (ECF 617). Even if it were true that the LME's executives "lobb[ied]" Congress, that circumstance does not mean that the UK government treats the LME as anything other than a public body; that the LME does not have statutory immunity in the UK; that the LME is not a market regulator in the UK; that the FCA does not regulate the LME; or that plaintiffs' complaint is based upon something other than the LME's regulatory role in managing the load-out rule. It is these issues that were the predicates for this Court's decision that the LME is immune. As the Court found, immunity is context-specific, and the LME's ordinary course of business conduct in the US affects neither its status as an instrumentality of a foreign government, nor the fact that plaintiffs' complaint is not based upon the LME's trading activities.

Plaintiffs' claim in their October 9<sup>th</sup> letter (ECF 607) that this Court needs help in understanding what the Rusal decision means is, charitably, also wrong. The relevance of that decision is its

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result; the Court of Appeals overturned a lower court decision and specifically found that the LME's consultation process is governed by public law and was appropriate.

Plaintiffs also argue that, because the LME justified its decision not to seek public comment on the option of imposing maximum price restraints on its affiliated warehouses on the basis of the risk of litigation challenging its ability to do so under competition law, that means that the LME has somehow admitted that its statutory immunity in the UK doesn't apply to its promulgation of the load-out rules that are the basis of their claims. This argument is irrelevant because this Court has repeatedly said that whether the LME's statutory immunity under UK law would apply to its conduct in a given case is not an issue; the existence of that immunity as a statutory matter is a relevant consideration in determining organ status.

Finally, the LME objects to plaintiffs' tactic of putting new arguments and evidence into the record in the form of increasingly shrill "letters" that are not authorized by the Local Rules of this Court, or Your Honor's Individual Rules of Practice in Civil Cases.

Respectfully submitted,

/s/ Margaret M. Zwisler

Margaret M. Zwisler (admitted *pro hac vice*)

([margaret.zwisler@lw.com](mailto:margaret.zwisler@lw.com))

William R. Sherman ([william.sherman@lw.com](mailto:william.sherman@lw.com))

Jennifer L. Giordano ([jennifer.giordano@lw.com](mailto:jennifer.giordano@lw.com))

LATHAM & WATKINS LLP

555 Eleventh Street, N.W., Suite 1000

Washington, D.C. 20004

Telephone: (202) 637-2200

Facsimile: (202) 637-2201

*Attorneys for Defendant The London Metal  
Exchange*

cc: All Counsel of Record (via ECF)